

SUPPLEMENTARY INFORMATION: At the request of Petrolite Corp., the Administrator proposes to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for synthetic petroleum wax as a coating agent in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.

Inert ingredients are ingredients that are not active ingredients as defined in 40 CFR 162.3(c), and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as water; baits such as sugar, starches, and meat scraps; dust carriers such as talc and clay; fillers; wetting and spreading agents; propellants in aerosol dispensers; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

Preambles to proposed rulemaking documents of this nature include the common or chemical name of the substance under consideration, the name and address of the firm making the request for the exemption, and toxicological and other scientific bases used in arriving at a conclusion of safety in support of the exemption.

Name of inert ingredient: Synthetic petroleum wax.

Name and address of requestor: Petrolite Corp., Tulsa, OK 74112.

Bases for approval: Synthetic petroleum wax is basically the same as the petroleum wax now cleared under 40 CFR 180.1001(c), except that it is derived from gaseous sources. Synthetic petroleum wax is cleared under 21 CFR 172.888 and meets the ultraviolet absorbency specifications as set forth under 21 CFR 172.888.

Based on the above information, and review of its use, it has been found that, when used in accordance with good agricultural practices, this ingredient is useful and does not pose a hazard to humans or the environment. It is concluded, therefore, that the proposed amendment to 40 CFR Part 180 will protect the public health, and it is proposed that the regulation be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains this inert ingredient, may request within 30 days after publication of this notice in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance

with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating both the subject and the petition and document control number, [OPP-300079]. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Registration Support and Emergency Response Branch at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 11, 1983.

Douglas D. Camp,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.1001(c) be amended by adding and alphabetically inserting the inert ingredient as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Synthetic petroleum wax conforms to 21 CFR 172.888.	.	Coating agent.

[FR Doc. 83-28453 Filed 10-18-83; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2880

Rights-of-Way Under the Mineral Leasing Act; Procedures for Reimbursement of Costs

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would amend Part 2880 by inserting cost recovery provisions that are currently contained in 43 CFR 2800 and updating them to provide more adequately for the recovery by the United States of reasonable costs of processing and monitoring rights-of-way and temporary use permits granted pursuant to authority provided by section 28 of the Mineral Leasing Act of 1920, as amended and supplemented.

DATE: Comments should be submitted by November 18, 1983. Comments postmarked or received after that date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Theodore G. Bingham, (202) 343-5441

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: A proposed rulemaking amending the right-of-way cost recovery regulations in 43 CFR Part 2800 was published in the *Federal Register* on January 17, 1983 (48 FR 2110), with a 60-day comment period. The cost recovery regulations in part 2800 had been made applicable to rights-of-way issued under the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 181 et seq.), by a reference to them in section 2883.1-1 of Part 2880. This proposed rulemaking would insert the cost recovery provisions of Part 2800 in Part 2880 rather than incorporating them by reference. The proposed rulemaking is basically the same as the existing regulations in Part 2880 as amended by the proposed rulemaking of January 17, 1983, except that additions have been made in response to comments on the January 17, 1983, proposed rulemaking and the language has been conformed to Part 2880.

This proposed rulemaking is in response to a decision by the United States Court of Appeals for the Tenth

Circuit in a consolidated appeal of three cost recovery cases (*Nevada Power Company v. Watt* (81-1944); *Public Service of Colorado v. Watt* (81-2066) and (81-2143); and *Colorado-Ute Electric Association v. Watt* (82-1304)) that held that the Department of the Interior must consider the factors listed in section 304(b) of the Federal Land Policy and Management Act (43 U.S.C. 1734(b)) in establishing costs for processing right-of-way applications under title V of the Federal Land Policy and Management Act. The Court further held that the existing regulations establishing the procedure for said processing did not provide for such consideration.

The proposed rulemaking of January 17, 1983, was essentially an updating of the existing regulations in 43 CFR 2803.1-1. That section provides generally for cost reimbursement under the Federal Land Policy and Management Act. However, the provisions of § 2803.1-1 are incorporated by reference at § 2883.1-1 and, therefore, are applicable to cost recovery under section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 185). The Mineral Leasing Act provides for cost reimbursement but does not require consideration of the specific factors listed in section 304(b) of the Federal Land Policy and Management Act as shown below:

"Reimbursement of Costs"

"(1) The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the costs incurred in monitoring the construction, operation, maintenance and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary."

Accordingly, the Tenth Circuit decision does not apply to regulations promulgated under the Mineral Leasing Act.

The Department of the Interior has decided to defer finalizing the proposed rulemaking of January 17, 1983, as it applies to the Federal Land Policy and Management Act, pending an analysis of the regulations in light of the Tenth Circuit decision. However, since cost reimbursement regulations under the Mineral Leasing Law have not been invalidated, the Department of the Interior will proceed with the promulgation of cost recovery procedures for rights-of-way granted under that Act. This proposed

rulemaking carries out that determination. For the convenience of those members of the public who may wish to comment on this proposed rulemaking and because the comment period on this proposed rulemaking is limited to 30 days, there is included a discussion of the comments on the proposed rulemaking of January 17, 1983, which are applicable to cost recovery for rights-of-way issued under the Mineral Leasing Act.

During the comment period, comments were received and considered from 61 sources, 36 from companies, 15 from Federal agencies and 10 from associations. The non-Federal comments were nearly unanimous in objecting to the imposition of cost recovery for grants of rights-of-way or temporary use permits across Federal lands. The issue of cost recovery has been raised each time the Department of the Interior has issued a rulemaking on right-of-way grants and has been opposed by the users of the Federal lands for right-of-way purposes. The position of the Department of the Interior is that section 28 of the Mineral Leasing Act, requires the Secretary of the Interior to collect administrative and other costs incurred in the processing of an application for a right-of-way grant or temporary use permit.

Several comments questioned the statement in the preamble that the increased charges made by the proposed rulemaking will not substantially increase the payments made by right-of-way applicants for processing applications and monitoring grants. The amendments contained in the proposed rulemaking of January 17, 1983, and adopted by this proposed rulemaking will more equitably distribute the cost of processing applications among applicants and will reduce the cost borne by the general taxpayer. The changes made by the proposed rulemaking will increase the funds recovered by the Bureau of Land Management from processing of applications for oil and gas rights-of-way and temporary use permits by approximately \$1 million annually and will increase the fees paid by some applicants. While this amount may seem large, it is insignificant when compared to the total cost of the facilities constructed on Federal lands for oil and gas right-of-way purposes.

Several comments suggested that rather than proceeding with the changes made by the proposed rulemaking, the better option would be to provide a reduction in the cost of processing applications and monitoring grants. The actions taken by the Department of the Interior over the past few months to

decentralize the granting authority, to develop more efficient appraisal techniques, to reduce mapping requirements and the other information required to be submitted with an application and to provide greater flexibility in the application of casual use are examples of actions taken to reduce processing costs. The actions included in each of the categories by this proposed rulemaking are those needed to comply with the statutory requirements of the several laws in addition to the Mineral Leasing Act of 1920 which control use of Federal lands for right-of-way purposes.

Several comments objected to having to pay processing and monitoring costs and annual rental because it results in a double payment. The comments argued that in private transactions, the annual rental includes the cost of actions needed to complete the transaction. The Mineral Leasing Act requires the payment of fair market value for the use of Federal lands and the annual rental reflects that requirement. In addition, the Act authorizes the Secretary of the Interior to promulgate regulations for collecting costs incurred in processing and monitoring an application/grant for the use of Federal lands. This proposed rulemaking is designed to recover such costs.

Many of the comments suggested that the fee schedule should be included in the cost recovery regulations and published in the Code of Federal Regulations, rather than being made part of the Bureau of Land Management Manual and directives. The final rulemaking has not adopted this suggestion for two reasons. First, the Bureau Manual and directives can be updated more readily. Second, it is not necessary for the fee schedule to be in the Code of Federal Regulations. The fee schedule will be subject to the requirements of the Administrative Procedures Act when it is changed, giving the public notice of any changes and an opportunity to comment on such schedule.

Some of the comments questioned the basis of the fee schedule that was published in the *Federal Register* of January 17, 1983 (48 FR 2113), and requested that the fee schedule and its development be fully explained. In compliance with these requests, the following is offered:

The right-of-way fee schedule was developed by a Bureau of Land Management task force consisting of employees of the Bureau with expertise in the processing and monitoring of right-of-way cases, budgeting and cost accounting. The task force analyzed

data from a representative sample of actual right-of-way cases and examined several demographic variables which might influence cost, including location and area of right-of-way or temporary use area. The analysis led to the conclusion that case processing requirements (e.g., appraisal, field examination, etc.), rather than right-of-way or temporary use area demographics (e.g., purpose, location of right-of-way or area, etc.) determine costs. As a result of the analysis by the team, six right-of-way cost categories were established, each defined in terms of the processing actions that will be required.

The fee computation for each of the established categories was based on the estimated work effort required to accomplish the processing actions for a typical right-of-way in that category. Each processing action was examined to: (1) identify what is done (e.g., short form appraisal); (2) where it is done (e.g., field or office); (3) who does the action (e.g., position titles and G.S. grade levels); and (4) how long it takes to do the action (e.g., hours). The Bureau of Land Management's cost of each action includes personnel costs, including fringe benefits, vehicle usage cost (if travel is required) and allowable indirect costs. Personnel costs were based on the hourly wage of the salary level of the employee who typically performs the action (step 5 which is the middle point of each pay grade); vehicle usage costs were based on a computed per mile cost for a mid-size General Services Administration vehicle (derived from GSA Transportation and Motor Vehicles rate bulletin); indirect costs were based on the Bureauwide indirect cost rate used for all cost recoverable work, such rate being computed annually to reflect any changes in cost. The total cost of all actions required for a specific category of application or grant becomes the nonrefundable fee for that category.

As was done in connection with other rulemakings involving cost recovery, several of the comments urged that the rulemaking include provision for audit of the Bureau of Land Management's cost recovery accounts by an applicant/holder. This proposed rulemaking does not include such a provision because it is not needed. Applicants/holders whose projects are determined to fall within category VI who dispute payments made under existing cost recovery regulations are furnished information showing how the Bureau has used the payments. An audit process is not needed for categories I through V because any appeal of the

authorized officer's determination will question the determination that a certain level of work is required, not how the payment will be expended.

The largest number of comments raised the point that the descriptions or definitions of the categories contained in the proposed rulemaking were insufficient to enable an applicant or the authorized officer to accurately and consistently determine the appropriate category for the application. In response to the comments, the category descriptions and definitions have been carefully reviewed to determine if changes were needed. The review was conducted within two constraints. First, the many different types of Federal lands for which applications are made for oil and gas pipeline rights-of-way require that the descriptions be in general terms. Second, the entire system of cost recovery categories must be based on a progressively increasing work requirement. For example, a category II application will require more work than a category I application. Similar relationships exist for all categories I through V. The category descriptions contained in the proposed rulemaking of January 17, 1983, and this proposed rulemaking are sufficiently specific to allow a determination as to which category is appropriate for an application.

Another group of comments expressed the opinion that the definitions were too narrow and suggested broadening them so that category I would include additional new right-of-way grants on an existing right-of-way grant. The definition of category I contained in the proposed rulemaking of January 17, 1983, and this proposed rulemaking includes an application for a right-of-way on lands included in an existing right-of-way grant. Similarly, category II, when read in conjunction with Departmental manual 516 (categorical exclusions), provides that a previously prepared environmental assessment for a right-of-way be used to qualify an application for this category.

Several comments suggested that the length of the right-of-way or the real size of the area of public lands covered by the application should be made an element of the category descriptions. These suggestions cited the apparent inequity of placing an application for a right-of-way of a hundred feet in the same category as an application for several miles. The analysis of data upon which the categories are based showed that in most cases the length or size of the right-of-way have no appreciable effect on the work required to process the application or monitor the grant.

These suggestions did not result in any changes in this proposed rulemaking.

Several of the comments observed that the applicant may prepare or have prepared an environmental assessment, an environment impact statement or other studies for submission to the Bureau of Land Management for use in processing an application and that the proposed rulemaking of January 17, 1983, did not specifically allow this activity. Neither the proposed rulemaking of January 17, 1983, nor this proposed rulemaking prohibit the authorized officer from considering the fact that the applicant has prepared or will prepare National Environmental Policy Act compliance and other documents when making the category determination for the application. Applicants who wish to prepare environmental documents should discuss such preparation and the content of the documents during pre-application activities.

Several of the comments pointed out that unless a process other than a full appraisal of the lands covered by the application were used, the fact that an appraisal was necessary would require an application to be placed in category VI. This observation is correct. However, the Bureau of Land Management now uses and is further expanding use of modified appraisal processes for use in determining rental of Federal lands. These modified appraisal procedures do not require preparation of a full appraisal. The use of these appraisal processes will allow most applications to be placed in categories I through V.

One comment wanted to know which category would cover his/her application. This question cannot be answered hypothetically. The only way to determine which category is appropriate for a specific application is to review the application and make a determination based on the activities which will be required. A good time for such review is during pre-application activity.

Several of the comments observed that the determination of the proper category for an application may be time-consuming and could significantly delay action on the application. Each application will be processed expeditiously by the authorized officer. Each Area and District office has personnel who are familiar with the Federal lands and resources of the area or District so that they are able to make a timely and correct determination of the appropriate category, usually from their personal knowledge and from information in their files. The discussion and review during pre-application

activity will provide information that the staff can use in making the category determination.

Two comments suggested that any rulemaking should require the authorized officer to make a commitment as to the date a final determination will be made on the application at the same time the decision is made on the category for the application. Because of uncertainties beyond the control of anyone that can arise during the processing of an application, it would be virtually impossible to require such a commitment and this proposed rulemaking does not contain such language. However, an applicant should discuss the timing of the need for a right-of-way grant during pre-application activity. To ascertain whether completion by a certain date can be anticipated.

Many of the comments objected to the requirement in the proposed rulemaking of January 17, 1983, making the payment of the fee a prerequisite to processing the application, especially in those cases where the applicant appeals the category determination. The comments noted that the delays inherent in the administrative appeals process would unreasonably delay the issuance of a right-of-way grant or temporary use permit and would in most instances preclude any appeal. In recognition of this situation, this proposed rulemaking has been amended to clarify the point that once the required payment is made, the application will be processed, the grant or permit issued and a refund will be made if ordered by decision on the appeal.

Several comments suggested that the language in § 2803.1-1(a)(4)(ii) of the proposed rulemaking of January 17, 1983, (§ 2883.1-1(a)(4)(ii) of this proposed rulemaking) should be changed to provide more flexibility to change the category determination, either up or down. The language of the proposed rulemaking provides adequate authority to change the category determination in those instances when it is determined to be in a category other than category VI. In all other instances, if, for example, the decision is that the application falls within category III and it in fact requires the work for category IV, the extra cost will be borne by the Bureau of Land Management. Only in those cases where, after the initial category determination, it is found that the application processing clearly falls within category VI will the category determination be changed. Any other provision for change of a category would require preparation of detailed

cost analysis records for every application, a process that would add additional cost to the processing of applications, and would result in greater costs to applicants. The suggestions have not been adopted by this proposed rulemaking.

A few comments observed that the language of § 2803.1-1(a)(5) of the proposed rulemaking of January 17, 1983 (§ 2883.1-1(a)(5) of this proposed rulemaking) was confusing and recommended that it be clarified. This proposed rulemaking adopts clarification language.

Finally, several comments questioned whether the work required to monitor a right-of-way grant or temporary use permit is directly related to the work required to process the application for that grant or permit. In a few instances such a direct relationship will not be present. However, the past experience of the Bureau of Land Management shows that such a relationship does exist for most grants or permits. The exceptions to the general rule are not sufficient to warrant a change in this area, and this proposed rulemaking adopts the language of the proposed rulemaking of January 17, 1983.

The principal author of this proposed rulemaking is Sheldon Weil, Division of Rights-of-way, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by the final rulemaking will not, when the payments for all right-of-way and temporary use applications are considered, substantially increase the payments made by right-of-way applicants for the processing and monitoring of their applications. The changes adopted by this proposed rulemaking will make the reimbursement of costs procedures fairer and will recover for the United States a greater portion of the costs incurred in the processing of right-of-way grant and temporary use permit applications.

The changes made by this proposed rulemaking will be equally applicable to all entities that make an application to the Bureau of Land Management for use of the Federal lands for oil or gas rights-of-way or temporary use permits.

The information collection requirements in this proposed rulemaking have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507.

The collection of this information will not be required until it has been approved by the Office of Management and Budget.

List of Subjects in 43 CFR Part 2880

Administrative practice and procedure, Common carriers, Oil and gas industry, Pipelines, Public lands—rights-of-way

PART 2880—[AMENDED]

Under the authority of section 28 of the Mineral Leasing Act, as amended and supplemented (30 U.S.C. 185), it is proposed to amend Part 2880, Group 2800, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

§ 2882.1. [Amended]

1. Section 2882.1(c) is amended by removing the citation “§ 2803.1-1” and replacing it with the citation “§ 2883.1-1”.

2. Subpart 2883 is amended by revising § 2883.1-1 to read:

§ 2883.1-1 Cost reimbursement.

(a)(1) An applicant for a right-of-way grant or a temporary use permit shall reimburse the United States for administrative and other costs incurred by the United States in processing the application, including the preparation of reports and statements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347), before the right-of-way grant or temporary use permit shall be issued under the regulations of this title.

(2) The regulations contained in this subpart do not apply to State or local governments or agencies or instrumentalities thereof where the Federal lands are used for governmental purposes and such lands and resources continue to serve the general public; except as to right-of-way grants or temporary use permits issued to State or local governments or agencies or instrumentalities thereof or a municipal utility or cooperative whose principal source of revenue is derived from charges levied on customers for services rendered that are similar to services rendered by a profit making corporation or business enterprise.

(3) The applicant shall submit with each application a nonreturnable application processing payment in the amount required by a schedule of fees for this purpose which shall be established and maintained by the Director and may be adjusted by the Director from time to time to reflect changes in costs. The fee schedule shall be incorporated in the Bureau Manual,

published periodically in the **Federal Register** and otherwise made generally available to the public. The fees required shall be based on a review of the use of the Federal lands for which the application is made, the resources affected and the complexity and costs to the United States for processing required by an application for a right-of-way grant and shall be established according to the following general categories:

(i) *Category I.* An application for a right-of-way grant or temporary use permit to authorize a use of an existing facility on Federal lands for which compliance with the National Environmental Policy Act is met through a categorical exclusion under Chapter 6, Part 516 of the Departmental Manual; no field examination of the lands affected by the application is required; and determination of rental is made through use of appraisal schedules previously prepared by the Bureau;

(ii) *Category II.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which compliance with the National Environmental Policy Act is met through either a categorical exclusion under Chapter 6, Part 516 of the Departmental Manual or a blanket, areawide or programmatic environmental assessment and finding of no significant impact; one general field examination is required; and determination of rental is made either through use of appraisal schedules or a short form appraisal of fair market rental value;

(iii) *Category III.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which compliance with the National Environmental Policy Act requires either preparation of a general environmental assessment from information and data readily available from existing Bureau documents or for which a previously existing environmental assessment prepared by the Bureau can be readily updated; one field examination of the lands affected; and determination of rental is made either through use of appraisal schedules or a short form appraisal of fair market rental value;

(iv) *Category IV.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which compliance with the National Environmental Policy Act requires one or more assessments of specific resources, but does not require the gathering of original data in preparation of the environmental assessment; no more than two field examinations of the lands affected by

the application are required; and determination of rental is made either through use of appraisal schedules or a short form appraisal of fair market rental value;

(v) *Category V.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which compliance with the National Environmental Policy Act requires one or more assessments of specific resources and the gathering of original data and supplementary documentation in preparation of the environmental assessment; no more than two field examinations of the lands affected by the application are required; and determination of rental is made either through use of appraisal schedules or a short form appraisal of fair market rental value;

(vi) *Category VI.* An application for a right-of-way grant or temporary use permit to authorize a use of Federal lands for which processing activities will be in excess of those listed under paragraph (a)(3)(v) of this section.

(4)(i) The authorized officer shall determine the appropriate category and required application processing fee prior to acceptance of an application. A record of the authorized officer's category determination shall be made and given to the applicant, and the decision is a final decision for purposes of appeal under § 2884.1 of this title. Notwithstanding the pendency of such appeal, an application shall not be accepted for processing without payment of the fee determined by the authorized officer, and where such payment is made, the application may be processed and, if proper, the grant or permit issued. The authorized officer shall make any refund directed by the appeal decision.

(ii) During the processing of an application, the authorized officer may change a category determination to place an application in Category VI at any time that it is determined that the application requires preparation of an environmental impact statement. A record of change in category determination under this paragraph shall be made, and the decision is appealable in the same manner as an original category determination made under paragraph (a)(4)(i) of this section.

(5)(i) An applicant whose application is determined to be in Category VI shall, in addition to the nonrefundable application processing payment, reimburse the full actual administrative and other costs of processing the application. The nonrefundable application processing payment required under the fee schedule shall be credited toward the total cost reimbursement

obligation of such applicant. When such an application is filed, the authorized officer shall estimate the costs expected to be incurred in processing the application and require the applicant to make periodic payments of the estimated reimbursable costs prior to such costs being incurred by the United States.

(ii) If the payments required by paragraph (a)(5)(i) of this section exceed the actual costs to the United States, the authorized officer may adjust the billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. An applicant may not set off or otherwise deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(iii) Prior to issuance of a right-of-way grant or temporary use permit, an applicant subject to paragraph (a)(5)(i) of this section shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (a)(5)(i) of this section.

(iv) An applicant subject to paragraph (a)(5)(i) of this section whose application is denied is responsible for costs incurred by the United States in processing the application, and such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of notice from the authorized officer of the amount due.

(v) An applicant subject to paragraph (a)(5)(i) of this section who withdraws an application before a decision is reached is responsible for costs incurred by the United States in processing the application up to the date the authorized officer receives written notice of the withdrawal, and for costs subsequently incurred in terminating the application review process. Such amounts as have not been paid in accordance with paragraph (a)(5)(i) of this section are due within 30 days of receipt of notice from the authorized officer of the amount due.

(6) When 2 or more applications for right-of-way grants are filed which the authorized officer determines to be in competition with each other, each applicant shall reimburse the United States as required by paragraph (a)(3) of this section. If reimbursement of actual costs is required under paragraph (a)(5)(i) of this section, each applicant shall be responsible for the costs identifiable with his/her application. Costs that are not readily identifiable with one of the applications, such as costs for portions of an environmental

impact statement that relate to all of the applications generally, shall be paid by each of the applicants in equal shares.

(7) When, through partnership, joint venture or other business arrangement, more than one person, partnership, corporation, association or other entity apply together for a right-of-way grant or temporary use permit, each such applicant shall be jointly and severally liable for costs under this section.

(8) When 2 or more noncompeting applications for right-of-way grants are received for what, in the judgment of the authorized officer, is one right-of-way system, all of the applicants shall be jointly and severally liable for costs under this section for the entire system, subject, however, to the provisions of paragraph (a)(7) of this section.

(b)(1) After issuance of a right-of-way grant or temporary use permit for which a fee was assessed under paragraph (a) of this section, the holder thereof shall reimburse the United States for costs incurred by the United States in monitoring the construction, operation, maintenance and termination of authorized facilities on the right-of-way or permit area, and for protection and rehabilitation of the lands involved.

(2) The holder shall submit a monitoring cost payment along with the written acceptance of the terms and conditions of the grant or permit pursuant to § 2882.3(1) of this title. The amount of the required payment shall be determined by the schedule of fees described in paragraph (a)(3) of this section. Acceptance of the terms and conditions of the grant or permit shall not be effective unless the required payment is made.

(3) A holder whose application was determined to be in Category VI for application processing purposes shall reimburse the actual administrative and other costs of monitoring the grant or permit. The monitoring payment required under the fee schedule shall be credited toward the total monitoring cost reimbursement obligation or such holder. When such a grant or permit is issued, the authorized officer shall estimate the costs expected to be incurred in monitoring the grant or permit and require the holder to make periodic payments of the estimated reimburseable costs prior to such costs being incurred by the United States.

(4) If the payments required by paragraph (b)(3) of this section exceed the actual costs to the United States, the authorized officer may adjust the next billing to reflect the overpayment, or make a refund from applicable funds under the authority of 43 U.S.C. 1734. A holder may not set off or otherwise

deduct any debt due to it or any sum claimed to be owed it by the United States without the prior written approval of the authorized officer.

(5) Following termination of a right-of-way grant or temporary use permit, any grantee or permittee that was determined to be in Category VI shall pay such additional amounts as are necessary to reimburse the United States for any costs which exceed the payments required by paragraph (b)(3) of this section.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

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BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172 and 173

[Docket No. HM-145E; Advance Notice]

Reportable Quantity of Hazardous Substance; Extension of Time for Public Comments

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking; extension of time for public comment.

SUMMARY: MTB published an advance notice in the *Federal Register* on August 8, 1983 (Docket HM-145E; 48 FR 35965), concerning reportable quantities of hazardous substances. Several requests have been received for an extension of the public comment period. This Notice extends the time for public comment from October 12, 1983, to November 16, 1983.

DATE: Comments must be received no later than November 16, 1983.

FOR FURTHER INFORMATION CONTACT: Thomas J. Charlton, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Washington, D.C. 20590, (202) 426-2075.

Issued in Washington, D.C. on October 12, 1983.

Alan I. Roberts,

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National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of rulemaking petition.

SUMMARY: This notice denies a petition filed by Mr. William Mahin to amend Federal Motor Vehicle Safety Standard (FMVSS) 111, *Rearview Mirrors*, to permit the use of a mirror system he designed for original equipment applications on passenger cars and trucks. Since NHTSA lacks sufficient data on the potential safety impacts of the use of this new mirror design and since Mr. Mahin did not provide such data himself, the agency is denying this petition. However, the agency plans to evaluate this mirror further as part of a future mirror research project, and will reconsider amending FMVSS 111 after the completion of that research.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590, (202-426-2153).

SUPPLEMENTARY INFORMATION: On June 4, 1982, Mr. William Mahin petitioned NHTSA to amend FMVSS 111 to permit the use of a mirror system he designed. FMVSS 111 currently requires that exterior mirrors must be planar (flat), except that spherically convex mirrors may be used on the passenger side of passenger cars and of trucks, multipurpose passenger vehicles, and buses other than school buses, with a gross vehicle weight rating of 10,000 pounds or less. The reason for the prohibition against the use of certain nonplanar mirror surfaces is that such surfaces may produce distorted images which could mislead drivers as to the distance to and velocity of objects viewed in the mirror. However, convex mirrors do have the advantage of providing a wider field of view than a plane mirror of similar size. Mr. Mahin's design is planar nearest the driver's eye and curves logarithmically toward the outer edge of the mirror.

Before NHTSA decides to initiate rulemaking to amend FMVSS 111 as requested by Mr. Mahin, the agency believes it should obtain information sufficient to permit it to conclude that the Mahin mirror performs at least as